IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3509 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANIF @ ANIYO LAGJI TAMAICHA (CHHARA)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3509 of 2004

MR ARVIND K THAKUR for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 29-12-2003, by

which the petitioner is detained as a "bootlegger" under P.A.S.A. Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about three criminal cases registered against the petitioner. All these cases are registered under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. After considering the said cases and statements of two witnesses, order of detention is passed against the petitioner, which is impugned in this petition.

2) The learned advocate for the petitioner has submitted that at the time of passing the order of detention, the petitioner was already in judicial custody in connection with all the three cases and there is nothing to suggest that the petitioner will move a bail application and he will be released on bail, therefore, the authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail. It is also submitted by the learned advocate for the petitioner that the petitioner has neither moved any bail application nor any such bail application is pending, therefore, there is no material to show as to on what basis the detaining authority has come to the conclusion that the petitioner will be released on bail and thereafter, he will continue this activity.

3) To substantiate his say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

> "There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That

likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

4) Considering the aforesaid judgment and considering the fact that there is nothing to show as to on what basis the authority has come to the conclusion that the petitioner will be released on bail and continue the same activity, the order of detention is required to be set aside.

5) Mr.A.Y.Kogje, learned AGP, submitted that when there are repeated cases normally bail should not be granted easily, however, so far as the aforesaid aspect of granting bail is concerned, it is for the concerned criminal Court to consider whether bail is required to be granted or not, however, on this aspect, this Court is not required to expressed any opinion. If any bail application is preferred by the petitioner, it is for the State to contest such bail application on all available grounds.

6) On the aforesaid ground that the detaining authority has not recorded its subjective satisfaction as to on what basis it has reached to the conclusion that the petitioner is likely to be released on bail, this petition is required to be allowed and it is allowed.

7) For the foregoing reasons, this petition is allowed. The order of detention dated 29-12-2003 is quashed and set aside. The detenu, Hanif alias Aniyo Lagji Tamaicha (Chhara) is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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